

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KEVIN D. SCHOEDINGER

Appeal No. 2004-2180
Application No. 10/131,020

ON BRIEF

Before HAIRSTON, WARREN, and DELMENDO, Administrative Patent Judges.

DELMENDO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134 (2003) from the examiner's final rejection of claims 1 and 2 (final Office action mailed Sep. 11, 2003, paper 9) in the above-identified application.¹ The other pending claims (claims

¹ After final rejection of the appealed claims, the appellant submitted an amendment pursuant to 37 CFR § 1.116 (2003) (effective Feb. 5, 2001) on Dec. 8, 2003, proposing a change to claim 2. This amendment has been entered for purposes

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3 and 4) also stand rejected, but the appellant has withdrawn the appeal as to these claims. (Appeal brief filed on Dec. 8, 2003, paper 13, page 4.)

The subject matter on appeal relates to an imaging device for imaging media (i.e., a printer). (Specification, page 1, lines 4 and 5.) Further details of this appealed subject matter are recited in representative claim 1 reproduced below:

1. An imaging device for imaging media having a warm state during continuing operations and having a cold state between said continuing operations, said imaging device having a heating element to effect final imaging powered from an electrical power supply and having a control system to initiate and control said imaging, said imaging device at start from said cold state being ready for imaging as soon as said heating element is ready for imaging, wherein the improvement comprises:

said heating element not being capable of drawing sufficient power from said power supply to significantly reduce power from a typical source of power to cause flicker,

said control system during said warm state delaying said imaging by a first amount when said media to be imaged is identified as heavy or thick,

said control system at start from said cold state delaying said imaging by a second amount when said media to be imaged is not identified to said control system as heavy or thick, and

said control system at start from said cold state delaying said imaging by a third amount longer than

of this appeal. (Examiner's answer mailed Feb. 27, 2004, paper 15, p. 2.)

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said first amount and longer than said second amount
when said media to be imaged is identified to said
control system as heavy or thick.

The examiner relies on the following prior art references
as evidence of unpatentability:

Nakazato et al. (Nakazato)	6,094,546	Jul. 25, 2000
Watanabe et al. (Watanabe) (published JP application)	JP 2002-55554	Feb. 20, 2002

Claims 1 and 2 on appeal stand rejected under 35 U.S.C.
§ 103(a) as unpatentable over Nakazato in view of Watanabe.²
(Answer at 3-7.)

We affirm this rejection.³ Because we are in complete
agreement with the examiner's analysis, we adopt the factual
findings and legal conclusions as set forth in the answer as our
own and add the following comments for emphasis.

The appellant's main argument in this appeal is that the
claimed invention, unlike the prior art, includes a heating

² We rely on the December 2003 English language translation
(Schreiber Translations, Inc.) of record.

³ The appellant submits that the appealed claims stand or
fall together. (Appeal brief at 4.) Accordingly, we confine
our discussion to independent claim 1. 37 CFR § 1.192(c)(7)
(2003) (effective Apr. 21, 1995).

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element "that can not draw power from the power supply sufficiently to cause flicker." (Appeal brief at 4-5.)

We find no merit in the appellant's argument. It is well settled that, in proceedings before the PTO, claims in an application must be given their broadest reasonable interpretation, taking into account any enlightenment by way of definitions or otherwise found in the specification. In re Bigio, No. 03-1358, slip op. at 5 (Fed. Cir. Aug. 24, 2004) ("[T]he PTO gives a disputed claim term its broadest reasonable interpretation during patent prosecution."); In re Morris, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997) ("[T]he PTO applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill."); In re Zletz, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) ("During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow."); In re Yamamoto, 740 F.2d 1569, 1571, 222 USPQ 934, 936 (Fed. Cir. 1984) ("The PTO broadly interprets claims during examination of a patent application since the applicant may 'amend his claim to obtain protection commensurate with his actual contribution to

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the art.'") (quoting In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550 (CCPA 1969)).

Neither the express language of appealed claim 1 nor the accompanying description in the specification places any quantifiable limitation on the term "typical source of power." Under the precedents of our reviewing court, we must construe the term "typical source of power" to encompass any source of power that is capable of supplying power to an imaging device. Thus, when coupled to a sufficiently-sized "typical source of power," Nakazato's printer would necessarily include a "heating element not being capable of drawing sufficient power from said power supply to significantly reduce power from a typical source of power to cause flicker."

Furthermore, appealed claim 1 is directed to an imaging device, i.e., an apparatus. The recitation "said heating element not being capable of drawing sufficient power from said power supply to significantly reduce power from a typical source of power to cause flicker" merely specifies an intended manner of operating or using the claimed apparatus. It has long been held that the patentability of an apparatus depends on the actual structure claimed, not on the use, function, or result thereof. In re Danly, 263 F.2d 844, 848, 120 USPQ 528, 531

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(CCPA 1959); In re Gardiner, 171 F.2d 313, 315-16, 80 USPQ 99,
101 (CCPA 1948).

For these reasons and those set forth in the answer, we
affirm the examiner's rejection under 35 U.S.C. § 103(a) of
appealed claims 1 and 2 as unpatentable over.

The decision of the examiner is affirmed.

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No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a).

AFFIRMED

Kenneth W. Hairston)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
Charles F. Warren)	
Administrative Patent Judge)	APPEALS AND
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Romulo H. Delmendo)	
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